

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b>		See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)
International application No. PCT/GB 03/02961	International filing date (day/month/year) 09.07.2003	Priority date (day/month/year) 09.07.2002	
International Patent Classification (IPC) or both national classification and IPC B05B11/06			
Applicant OPTINOSE AS et al.			

<ol style="list-style-type: none"> <li>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</li>   <li>2. This REPORT consists of a total of 5 sheets, including this cover sheet.           <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p> </li> </ol>	
<ol style="list-style-type: none"> <li>3. This report contains indications relating to the following items:           <ul style="list-style-type: none"> <li>I    <input checked="" type="checkbox"/> Basis of the opinion</li> <li>II   <input type="checkbox"/> Priority</li> <li>III   <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li>IV   <input type="checkbox"/> Lack of unity of invention</li> <li>V   <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li>VI   <input type="checkbox"/> Certain documents cited</li> <li>VII   <input type="checkbox"/> Certain defects in the international application</li> <li>VIII   <input type="checkbox"/> Certain observations on the international application</li> </ul> </li> </ol>	

Date of submission of the demand  09.02.2004	Date of completion of this report  05.11.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Jelercic, D Telephone No. +49 89 2399-2941



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## I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

### Description, Pages

1-34 as originally filed

### Claims, Numbers

1-44 as originally filed

### Drawings, Sheets

1/10-10/10 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

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5.  This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	
	No: Claims	1, 41
Inventive step (IS)	Yes: Claims	
	No: Claims	1,41
Industrial applicability (IA)	Yes: Claims	1-44
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

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**Re Item V**

**Reasoned statement under Rule 35 (2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1:** EP-A-0 407 276 (VALOIS SA) 9 January 1991 (1991-01-09)
- D2:** WO 98/58695 A (MERANTE FRANCESCO ;CECCHINI MARCO (IT); PERA IVO (US)) 30 December 1998 (1998-12-30)
- D3:** US-A-5 215 221 (DIRKSING ROBERT S) 1 June 1993 (1993-06-01)
- D4:** US-A-1 715 986 (BROWN EDWARD C) 4 June 1929 (1929-06-04)
- D5:** BE 483 886 A (DELFORTRIE JEAN FILS) 31 July 1948 (1948-07-31)
- D6:** DE 34 46 466 A (BADEWIEN REINHARD) 3 July 1986 (1986-07-03)
- D7:** FR 967 505 A (CREPIN & CIE H) 6 November 1950 (1950-11-06)

1. The present application comprises **two** independent claims (**nos. 1 and 41**) in the same category of devices. Although these claims have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection. Hence, **claims 1 and 41** do not comply with the requirements of Article 6 PCT.
  - 1.1 In order to meet the requirements of Article 6 PCT, the present set of claims should not comprise more than one independent claim per category. In the present case it is considered appropriate to use only **one** independent claim referring to the delivery device and **one** independent claim referring to a delivery method.
  - 1.2 The International preliminary examination can, therefore, not be undertaken as long as the claims do not comply with the requirements of Article 6 PCT.
2. Notwithstanding that in view of the objection above it is not possible to define the inventive concept of the application at issue and that it is therefore at present not practicable to carry out a full examination, the following preliminary comments are

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given only with respect to the independent claims. No opinion with regard to novelty, inventive step and industrial applicability is given for the dependent claims.

- 2.1 The subject-matter of present independent **claim 1** does not meet the requirements of Rule 33.1 a), b), c) PCT because the subject-matter of independent **claim 1** is not new in view of any of the prior art documents D1-D7, e.g. for D1 (cf. column 3, line 56 to column 5, line 54 and figure 1-3).
- 2.2 The subject-matter of present independent **claim 41** does not meet the requirements of Rule 33.1 a), b), c) PCT because the subject-matter of independent **claim 41** is not new in view of any of the prior art documents D1-D7 (cf. column 3, line 56 to column 5, line 54 and figure 1-3).

**Further remarks**

3. Independent **claims 1** and **41** are not drafted in the two part form specified in Rule 6.3b) of the PCT.
  - 3.1 Reference numerals are missing after the technical features of the claims (see Rule 6.2b) and PCT Preliminary Examination Guidelines, Chapter III, 4.11).
  - 3.2 **Claims 43** and **44** contain reference to the description and/or the drawings. According to Rule 6.2(a) PCT, claims should not contain such references except where absolutely necessary, which is not the case here.
  - 3.3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D7 is not mentioned in the description, nor is/are this/these document/s identified therein.